

Message Text

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PAGE 01 STATE 155588
ORIGIN EB-08

INFO OCT-01 ARA-10 ISO-00 L-03 COME-00 FMC-01 XMB-02
/025 R

DRAFTED BY EB/TRA/MA:CTAYLOR:DEH
APPROVED BY EB/TRA:JRATWOOD
ARA:RGARELLANO
ARA/ECA:RWZIMMERMAN
ARA:JABUSHNELL(SUBSTANCE)
MARAD:RBOURDON
ARA/ECP:CNORRED
FMC:WJSMITH (SUBS)
ARA/ECA:STMYLES
L/EB:FWILLIS

-----128937 192355Z /66

O R 192204Z JUN 78
FM SECSTATE WASHDC
TO AMEMBASSY BRASILIA IMMEDIATE
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

C O N F I D E N T I A L STATE 155588

E.O. 11652: N/A

TAGS: EWWR. BR

SUBJECT: SEA-LAND IN BRAZIL

REF: BRASILIA 4576

1. THE DEPARTMENT HAS CAREFULLY REVIEWED POINTS MADE BY
THE EMBASSY IN REFTEL A, AND HAS RECOGNIZED THAT POSSIBLE
DAMAGE TO US-BRAZIL RELATIONS MIGHT OCCUR FROM WITHDRAWAL
OF EXIM FINANCING OF CARRIAGE ON BRAZILIAN-FLAG VESSELS.
THE MARITIME ADMINISTRATION HAS PARTICIPATED IN THIS RE-
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VIEW AND AFTER FULL CONSIDERATION HAS DECIDED TO PURSUE
ACTION OUTLINED IN REF B. THE DEPARTMENT RECOGNIZES THAT
MARAD IS LEGALLY ABLE TO REQUEST SUCH ACTION AND, GIVEN
OVERALL SITUATION, THE DEPARTMENT CONCURS THAT WITHDRAWAL
OF THIS FINANCING IS JUSTIFIED AND IS IN FACT LEAST
DAMAGING OF AVAILABLE ALTERNATIVES. WE BELIEVE THAT
BRAZILIAN AUTHORITIES SHOULD BE INFORMED OF IMPENDING

ACTION BUT THAT THE EMBASSY SHOULD EMPHASIZE OUR RESTRAINT IN TAKING ONLY LIMITED ACTION, AND THAT MUCH STRONGER ACTION AVAILABLE TO MARAD WAS NOT TAKEN IN AN EFFORT TO COME TO SOME SOLUTION TO THIS MATTER.

2. DURING APRIL VISIT USDEL EXPLAINED TO BRAZILIAN OFFICIALS THE VARIOUS LEGAL REMEDIES AVAILABLE TO SEA-LAND

UNDER US LAW AND INDICATED SEA-LAND'S INTENTION TO RESORT TO THEM IF DELEGATION VISIT FAILED TO RESOLVE PROBLEMS. AS EMBASSY AWARE, THESE REMEDIES INCLUDE REQUESTING MARAD TO WITHDRAW P.R. 17 WAIVERS WHICH ENABLE BRAZILIAN VESSELS TO CARRY 50 OF EXIM-FINANCED CARGOES; FILING A COMPLAINT UNDER SECTION 301 OF TRADE ACT WHICH COULD RESULT IN IMPOSITION OF FEES OR ENTRY RESTRICTIONS ON BRAZILIAN PRODUCTS OR VESSELS AND FILING COMPLAINT WITH FEDERAL MARITIME COMMISSION (FMC) UNDER SECTION 19 OF MERCHANT MARINE ACT OF 1920 IN ACCORDANCE WITH WHICH FMC COULD IMPOSE FEES OR OTHER RESTRICTIONS ON BRAZILIAN VESSELS OR CARGOES. USDEL MADE CLEAR THAT FAILURE TO LOWER IN-EQUITABLE BARRIERS TO SEA-LAND'S PARTICIPATION COULD LEAD TO EXIM DENIAL OF FINANCING OF FREIGHT FOR CARGOES SHIPPED ON BRAZILIAN-FLAG VESSELS.

3. THIS LATTER ACTION IS THE MILDEST WHICH COULD BE TAKEN. BRAZIL IS ONE OF ONLY TWO COUNTRIES (COLOMBIA IS THE OTHER) CONFIDENTIAL

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FOR WHICH EXIM FINANCES COST OF FREIGHT ON NON-US FLAG VESSELS. THIS WAS A SPECIAL BENEFIT GRANTED TO BRAZIL WHEN 1970 US-BRAZIL MARITIME AGREEMENT WAS NEGOTIATED (IT IS NOT, HOWEVER, PART OF THAT AGREEMENT). MARAD IS ONLY ASKING THAT EXIM CEASE THIS SPECIAL EXTRA FINANCING. MARAD HAS NOT COME TO POINT OF WITHDRAWING P.R. 17 WAIVERS WHICH ALLOW EXIM CARGOES TO BE CARRIED ON BRAZILIAN VESSELS, ALTHOUGH SEA-LAND HAS REQUESTED THAT IT DO SO.

4. IF MARAD DID NOT TAKE THIS RELATIVELY MODEST ACTION, IT IS UNLIKELY THAT SEA-LAND WOULD HOLD BACK ANY LONGER FROM PURSUING THE MORE DRASTIC LEGAL REMEDIES IT HAS THREATENED, WHICH COULD HAVE FAR MORE SERIOUS EFFECTS ON US-BRAZIL RELATIONS. SHOULD SEA-LAND PRESS MARAD TO FOLLOW UP ON ITS REQUEST FOR WITHDRAWAL OF P.R. 17 WAIVERS, THE DEPARTMENT BELIEVES THAT MARAD WOULD HAVE LITTLE CHOICE BUT TO FIND THAT BRAZIL IS NOT MAINTAINING "FAIR AND EQUITABLE CONDITIONS" AND TO WITHDRAW THE WAIVERS. SINCE P.R. 17 WAIVERS (I.E. SHARING OF EXIM-FINANCED CARGOES) ARE BASIS ON WHICH EXISTING EQUAL ACCESS AGREEMENT IS PREDICATED, WITHDRAWAL OF WAIVERS WOULD LIKELY LEAD TO COLLAPSE OF THAT AGREEMENT, WHICH HAS

ENSURED SMOOTH SHIPPING RELATIONS BETWEEN US AND BRAZIL FOR SOME YEARS. WITHDRAWAL OF EXIM FINANCING FOR CARRIAGE ON BRAZILIAN VESSELS IS THE ONE ACTION WHICH MARAD CAN TAKE WHICH WILL NOT LEAD TO TERMINATION OF THE EQUAL ACCESS AGREEMENT. BY FORESTALLING LIKELY MORE DRASTIC ACTION, THE DOOR IS LEFT OPEN FOR FURTHER DIPLOMATIC AND COMMERCIAL EFFORTS TO RESOLVE DIFFICULTIES.

5. REGARDING THE ISSUE OF CONTAINER SIZE, THE DEPARTMENT AND MARAD CERTAINLY DO NOT DENY BRAZIL'S SOVEREIGN RIGHT TO SET REASONABLE STANDARDS FOR CONTAINERIZATION. IT SHOULD BE NOTED, HOWEVER, THAT THE INTERNATIONAL STANDARDS ORGANIZATION IS A PRIVATE BODY, WHICH MAKES RECOMMENDATIONS WHICH ARE NOT MANDATORY AND NOT INTENDED TO BE; ITS
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RECOMMENDATIONS HAVE NO PARTICULAR INTERNATIONAL STANDING. BRAZIL IS ONLY COUNTRY IN WORLD WHICH HAS MADE ISO STANDARDS MANDATORY. SEA-LAND HAS USED ITS 35-FEET CONTAINERS THROUGHOUT THE WORLD, AND THEIR EXPERIENCE INDICATES THAT THESE CONTAINERS PRESENT NO SAFETY OR TECHNICAL DIFFICULTIES; SEA-LAND HAS GONE TO CONSIDERABLE LENGTH TO DEMONSTRATE THIS TO GOB INERAGENCY COMMITTEE (CIDETI). THERE SEEMS LITTLE DOUBT THAT RIGID BRAZILIAN ADHERENCE TO REQUIREMENT FOR 20/40 FEET CONTAINERS (DESPITE DISCRETION TO GRANT WAIVERS POSSESSED BY CIDETI) IS MOTIVATED BY DESIRE TO KEEP SEA-LAND OUT OF BRAZIL'S TRADES; BRAZILIAN OFFICIALS HAVE MADE CLEAR IN CONVERSATIONS WITH USG OFFICIALS THEIR DISTRUST OF SEA-LAND, WHOSE SIZE AND COMPETITIVENESS THEY SEEM TO FEAR (REF. C, PARA 8). HENCE, WHAT WE SEEM TO FACE IS AN INGENUOUSLY DRAFTED REGULATION ON EQUIPMENT STANDARDS WHICH IS IN REALITY DESIGNED TO EXCLUDE A PARTICULAR CARRIER FROM THE BILATERAL US-BRAZIL TRADES.

6. AS EMBASSY AWARE, HOWEVER, THE MORE SERIOUS OBSTACLE TO SEA-LAND PARTICIPATION IN US-BRAZIL TRADES IS RESOLUTION 5246 FORBIDDING TRANSSHIPMENT OF EXPORTS FROM AND IMPORTS TO BRAZIL. IT NOT ONLY EFFECTIVELY DISCRIMINATES AGAINST SEA-LAND (IT WAS ISSUED SHORTLY AFTER SEA-LAND'S SERVICE INTENTIONS AND PLANNED ROUTES BECAME KNOWN IN THE TRADE) BUT IS ALSO AN UNJUSTIFIED INTRUSION INTO U.S. COMMERCE. PROENCE ROSA'S ACCOUNT OF BRAZIL'S OBJECTIONS TO PUERTO RICO TRANSSHIPMENT (PARA 8 OF REF A) SEEMS DISINGENOUS. THERE NEVER HAS BEEN ANY INTENTION THAT SEALAND'S PUERTO RICO TRANSSHIPPED CARGO WOULD BY-PASS EXISTING POOL ARRANGEMENTS AND THUS INVADE BRAZILIAN LINES' SHARES OF POOL CARGO. IT HAS ALWAOS BEEN UN TOOD (AND MADE CLEAR TO GOB OFFICIALS) THAT
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SEA-LAND'S SHARE OF TRADE WOULD COME FROM THOSE PORTIONS OF POOLS ALREADY ALLOCATED TO U.S. CARRIERS. QUESTION OF INCLUDING PUERTO RICO IN AN EXISTING POOL IS NOT REALLY GERMANE SINCE VIRTUALLY ALL CARGO TRAVELING BETWEEN PUERTO RICO AND BRAZIL WOULD ORIGINATE IN ATLANTIC, GULF, OR WEST COAST POOL PORTS AND WOULD HENCE BE ALLOCATED TO THOSE POOLS (FYI ONLY. WE UNDERSTAND THAT SEA-LAND HAS EVEN OFFERED TO CONCEDE ALL OF THE TINY VOLUME OF PUERTO RICO BRAZIL CARGO TO BRAZILIAN CARRIERS. END FYI.) INCLUSION OF PUERTO RICO IN APPROPRIATE SEA-LAND TRANSSHIPS AT PUERTO RICO ORIGINATES IN SEVERAL POOL AREAS (ATLANTIC, GULF, WEST COAST) AND BELONGS TO THOSE POOLS. SUBJECT WAS REVIEWED EXTENSIVELY WITH GOB OFFICIALS DURING THE APRIL 3-6 VISIT BY USDEL LED BY MARITIME ADMINISTRATOR BLACKWELL (SEE REF C, PARA 5).

7. AS SUGGESTED BY EMBASSY IN REF. A PARA 8, DEPARTMENT CAN ENVISAGE A RESOLUTION OF CURRENT DIFFICULTIES, POSSIBLY INVOLVING A DEGREE OF TRADE-OFF BETWEEN THE TWO ISSUES INVOLVED. WE CONSIDER, ABOVE ALL, THAT EXISTENCE OF RESOLUTION 5246 IS AN INTRUSION BY A FOREIGN COUNTRY INTO A DOMESTIC MATTER THAT CANNOT BE ACCEPTED BY THE U.S. USG IS, HOWEVER, IN NO POSITION TO COMMIT SEA-LAND TO RESOLUTION INVOLVING ACQUIESCENCE IN PROHIBITION OF 35-FEET CONTAINERS IN RETURN FOR LIFTING OR AMENDMENT OF RESOLUTION 5246, NOR CAN USG MAKE ANY COMMITMENT ON BEHALF OF SEA-LAND NOT TO PURSUE AVAILABLE LEGAL REMEDIES WITH REGARD TO CONTAINER SIZE. BOTH STEPS WOULD INVOLVE COMMERCIAL DETERMINATIONS WHICH ONLY SEALAND CAN MAKE. HOWEVER, IF GOB OFFICIALS CAN BE CONVINCED THAT PUERTO RICO TRANSSHIPMENT WILL NOT ENDANGER POSITION OF BRAZILIAN SHIPPING LINES IN POOL ARRANGEMENTS, IT MIGHT FACILITATE A RESOLUTION ALONG THOSE LINES. MISCONCEPTION THAT BRAZILIAN CARRIERS WILL SUFFER FROM CANCELLING OR AMENDMENT OF RESOLUTION 5246 SEEMS TO BE OF PRIMARY CONCERN TO GOB, JUDGING FROM PROENCA ROSA'S COMMENTS, CONFIDENTIAL

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AND DEPARTMENT BELIEVES EMBASSY SHOULD CONCENTRATE ON ATTEMPTING TO CLEAR UP THIS MISCONCEPTION IN DISCUSSIONS WITH GOB OFFICIALS.

8. DEPARTMENT IS THEREFORE CONVINCED THAT MARAD IS ELECTING MOST RESTRAINED RESPONSE POSSIBLE IN THE SITUATION, IN ABSENCE OF WHICH SEA-LAND WOULD PROBABLY

RESORT TO MORE SERIOUS MEASURES, INCLUDING PRESSING FOR
WITHDRAWAL OF P.R. 17 WAIVERS. MARAD CONCURS THAT
NOTIFICATION OF GOB SHOULD BE ACCOMPANIED BY DEMARCHE
INDICATING THAT MARITIME ADMINISTRATOR HAS EXERCISED
RESTRAINT IN THIS MATTER IN HOPE THAT SOME RESOLUTION
CAN BE ACHIEVED. EMBASSY MAY ASSURE GOB OFFICIALS THAT
MARAD AND DEPARTMENT OFFICIALS STAND READY TO DISCUSS
MATTER FURTHER. (FYI. MARAD AND DDEPARTMENT OFFICERS WOULD
BE PREPARED TO MEET WITH GOB OFFICIALS ON RELATIVELY SHORT
NOTICE IF GOB SHOULD INDICATE INTEREST IN RESUMING DIS-
CUSSIONS. IT IS OUR UNDERSTANDING THAT COMMERCIAL NEGO-
TIATIONS AMONG SEA-LAND, GOB AUTHORITIES AND OTHER LINES
ARE IN PROGRESS AND ARE EXPECTED TO CONTINUE. END FYI.) VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAND, MARINE TRANSPORTATION, LAW, DISCRIMINATION, CARGO HANDLING
Control Number: n/a
Copy: SINGLE
Draft Date: 19 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE155588
Document Source: CORE
Document Unique ID: 00
Drafter: CTAYLOR:DEH
Enclosure: DG ALTERED
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780255-0950
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780643/aaaablhx.tel
Line Count: 237
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 00e84086-c288-dd11-92da-001cc4696bcc
Office: ORIGIN EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 BRASILIA 4576
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 08 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2296047
Secure: OPEN
Status: NATIVE
Subject: SEA-LAND IN BRAZIL
TAGS: EWWT, BR, SEA-LAND
To: BRASILIA
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/00e84086-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014